

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WAYNE BILLINGSLEY, et al.,) CV F 02 5853 REC DLB
Plaintiffs,)
v.) ORDER REGARDING PARTIES'
LOVELAND INDUSTRIES, INC.,) DISCOVERY DISAGREEMENTS
dba UAP WEST, et al.,) (Document 93)
Defendants.)

On July 14, 2005, the parties filed the instant discovery motion. The matter was heard on August 5, 2005, before the Honorable Dennis L. Beck, United States Magistrate Judge. Gerald Leverett appeared on behalf of Plaintiffs. Sean Slattery appeared on behalf of Defendant.

BACKGROUND

Plaintiffs filed the instant action in the Tulare County Superior Court on June 12, 2002, and the action was subsequently removed to this Court. Plaintiffs allege that Defendant Loveland Industries, Inc. (“Defendant”)¹ trespassed upon Plaintiffs’ almond orchard. Specifically, Plaintiffs allege that during 2001, Defendant, without authorization, deposited into a certain “tail water pit” unknown substances or materials which were generated by Defendant.

¹ On February 12, 2005, the Court granted Defendant J.R. Simplot Company's Motion for Good Faith Settlement.

1 Plaintiffs allege that the orchard was damaged as a result of the introduction of the substances
2 into the irrigation water. Defendant contends that the only substances it placed into the tail water
3 pit were rinsewater and minimal amounts of nitrogen based fertilizers (referred to by the parties
4 as "rinseade" and/or "rinsate"), and that it did so with permission and pursuant to a two year old
5 informal agreement between the parties. Defendant further contends that it did not cause any
6 damage to Plaintiffs' property.

7 On February 24, 2005, Plaintiffs filed their first discovery motion regarding Defendant's
8 responses to Plaintiff's Request for Admissions, Nos. 1-30. These requests asked for admissions
9 relating "captured diluted solutions" and "fertilizing materials," as those terms are defined by the
10 California Food and Agriculture Code. On March 29, 2005, the Court denied the motion in part
11 and granted the motion in part. As is relevant for this motion, the Court ordered Defendant to
12 respond to Plaintiffs' Requests for Admissions, except for Nos. 2, 3, 11 and 12.

13 On July 14, 2005, the parties filed the instant discovery motion. Plaintiffs request that the
14 Court determined the sufficiency of Defendant's responses to Plaintiffs' Requests for Admissions
15 Nos. 15, 16, 18, 26 and 28. Defendant seeks to compel the deposition of Plaintiff Wayne
16 Billingsley.

17 The parties filed their joint statement pursuant to Local Rule 37-251 on July 25, 2005.
18 On August 3, 2005, the parties filed a supplemental joint statement indicating that the issues
19 regarding Requests for Admissions Nos. 26 and 28 had been resolved.

20 **DISCUSSION**

21 A. **Defendant's Responses to Requests for Admissions**

22 Pursuant to Federal Rule of Civil Procedure 36(a), a party who has requested admissions
23 may move to determine the sufficiency of the answers or objections.

24 Plaintiffs request that this Court determine the sufficiency of Defendant's responses to
25 Plaintiffs' Requests for Admissions, Nos. 15, 16, and 18. On March 29, 2005, the Court ordered
26 Defendant to provide responses to Plaintiffs' Requests for Admissions, except for Nos. 2, 3, 11
27 and 12. The Court explained that the requests were proper because they required Defendant to
28 apply the facts of the instant action to the legal terms as defined in the preamble to the requests.

1 The requests at issue are as follows:

2 Request No. 15

3 Admit that Defendant UAP distributed to Plaintiffs captured diluted solutions that were
4 not physically accompanied by a label in 2000.

5 Request No. 16

6 Admit that Defendant UAP distributed to Plaintiffs captured diluted solutions that were
7 not physically accompanied by a label in 2001.

8 Request No. 18

9 Admit that Defendant UAP never tested the captured diluted solutions distributed by
10 UAP to Plaintiffs in 2001 to determine the minimum percentage of primary or secondary plant
11 nutrients or micronutrients, or both.

12 Defendant provided the following response² to each of the above requests:

13 Deny. To the extent plaintiffs' preliminary definitions mirror sections of the California
14 Agricultural Code, responding party admits the majority of its practices as they pertain to
15 fertilizer distribution within the State of California are governed by applicable sections of the
16 California Agricultural Code.

17 The response is the same response provided prior to Plaintiffs' first discovery motion and
18 the Court's subsequent order. Plaintiffs assert that the response is insufficient, based on the prior
19 court order and based, in part, on the belief that the facts undermine Defendant's denial.

20 A review of the Court's prior order reveals that the Court simply ordered Defendant to
21 either admit or deny the requests at issue. Indeed, Defendant's answer goes beyond that and
22 includes a further explanation regarding the applicability of the California Food and Agriculture
23 Code to Defendant's practices. This explanation, which is neither a denial nor an admission, is
24 irrelevant. Accordingly, the Court ORDERS the explanation that follows "Deny." STRICKEN.
25 Defendant's response to Plaintiffs' Request for Admissions Nos. 15, 16 and 18 is therefore,
26 "Deny."

28 ² The Court has not included Defendant's boilerplate objections.

1 To the extent Plaintiffs argue that the facts make Defendant's denials questionable and
2 request that this Court order admissions, the Court cannot prohibit a party from admitting or
3 denying a request based upon their understanding and application of the facts.

4 B. Deposition of Plaintiff Wayne Billingsley

5 _____ Defendant requests that this Court order Plaintiff Wayne Billingsley to appear for his
6 properly noticed deposition. Plaintiffs have objected to his deposition because of his physical
7 health, explaining that he suffered a stroke two years ago and contend that he is not capable of
8 giving accurate testimony. They also contend that the deposition process may constitute a health
9 hazard.

10 Mr. Billingsley, despite his health issues, is a named plaintiff in this case and Defendant
11 is entitled to his deposition. Defendant is aware of his condition and is willing to make certain
12 accommodations. Accordingly, Defendant's request to depose Mr. Billingsley is GRANTED.
13 The deposition will take place at a time and place of Mr. Billingsley's convenience. The
14 deposition will be limited to two hours and will be recessed if the need arises.

15 **ORDER**

16 1. As to Plaintiffs' motion to determine the sufficiency of Defendant's responses to
17 Requests for Admissions Nos. 15, 16 and 18, the Court ORDERS the explanation
18 that follows "Deny." STRICKEN. Defendant's response to Plaintiffs' Request for
19 Admissions Nos. 15, 16 and 18 is therefore, "Deny."

20 2. Defendant's motion to compel the deposition of Plaintiff Wayne Billingsley is
21 GRANTED. The deposition shall (1) take place at a time and place of Mr.
22 Billingsley's convenience; (2) be limited to two hours; and (3) be recessed if the
23 need arises.

24 IT IS SO ORDERED.

25 Dated: August 5, 2005

26 3b142a

27 /s/ Dennis L. Beck
28 UNITED STATES MAGISTRATE JUDGE